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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1168

ALBERT C. DULANEY,

Petitioner,

vs.

M. COPPARD, TRUSTEE,

Respondent

REPLY BRIEF TO RESPONDENT'S BRIEF AS TO PETITION FOR WRIT OF CERTIORARI

ALBERT C. DULANEY,
803 Brady Building,
San Antonio 5, Texas,
Petitioner.

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Respondent, in his Brief, says nothing about the text hereunder.

Again respondent admits the soundness of the legal proposition set out in Collier on Bankruptcy, 14th Edition, Volume II, Page 1594: "Reasonable notice and a right to be heard are requisite to the validity of any order issued by the Referee." On Page 5 of Respondent's brief a statement is made that petitioner has cited no case, holding on similar facts, that due process has been denied. After running through 14 editions, Collier has gathered together many cases all of which sustain the correct statement of the law found in the text, many of which hold on similar facts that due process had been denied, the principal involved being of universal application and its soundness cannot be suc-

cessfully questioned by anyone. Due process of law requires that every step in a judicial proceeding and before a referee in bankruptcy must be after a reasonable notice, a right to be heard, and every litigant having his day in court, or any such proceeding is void. On Page 14 of petitioner's concise brief, 16th Corpus Juris Segundum, 1141 et seq. concerning due process of law, states: "In the concrete, it (due process of law) means in a contest involving these rights (substantive rights) he (any person) will be accorded the opportunity to contest the propriety of each step in the action sought to be taken against him;" there *State* versus *Broaddus* is quoted, *City of St. Louis* versus *Railroad*, and *Dartmouth College* case. In this case the rights of women are vitally affected as to their property being handled for them, one of the owners being at death's door; respondent's purpose being plain to try to confiscate their property in order to make contingent fees and commissions. Respondent admits that Section 14(b) of the Bankruptcy Act specifically provides for extension of time "granted by the court"; this part of bankruptcy law alone applies although respondent quotes general order in bankruptcy 37, leaving out the material part of it as if notice and hearing were not necessary. General Order 37 expressly provides that in proceedings under the Bankruptcy Act the Rules of Civil Procedure for the District Court of the United States shall apply IN SO FAR AS THEY ARE NOT INCONSISTENT WITH THE ACT. The Bankruptcy Act itself as above quoted requires extensions of time to be granted in such cases by the court, which is inconsistent with Rule 6 of the Rules of Civil Procedure for United States District Courts. The mass of records and evidence referred to on Page 5 of respondent's brief has reference to other people's property being handled for them and not property personally of petitioner. More than 2½ years have been spent in trying to wear out these whose property is being investigated without right so that some

compromise may be forced by which defenseless women will have their property confiscated. Since the extension of time was to be granted by the court, reasonable notice, hearing, motion, evidence, all the requisites of due process were necessary. A judge or referee's own personal knowledge might disqualify him to sit but there must be the presentation in a judicial proceeding of evidence and the right to cross examine instead of having the referee make up his own mind secretly in his own office without any real proceedings, and really like the "Court of Star Chamber" if it could even be considered that good. On Page 6 of the respondent's brief he tries to maintain the soundness of the proposition that a creditor may apply for extension of time involved in this petition. In Collier on Bankruptcy, 14th Edition, Volume II, Page 280 et seq. the statement is there made: "It has been indicated that where creditor desires examination of a witness he should first apply to the * * * trustee and if refused, then apply to the court and show that the refusal was unwarranted." The soundness of this proposition of law is clear from decisions, although respondent's brief tries to show the opposite; the same thing applies to a creditor who has taken no part in the proceedings and has been guilty of laches or stale demand. This is a plain principle of equity. Objection is made in the respondent's brief to the *Tumey* case on the ground that it was a criminal case, but the language of the court written by Chief Justice Taft shows that this is a general principle applicable to all cases whether civil or criminal without distinction. In 50th A. L. R. 1256, the decisions are gathered together in a note and some of the cases are civil cases. The right to an impartial judge is a fundamental of justice, is necessary to due process of law or law of the land all the way back since before 1215, the date of the Great Charter. Respondent seeks to set aside all constitutional provisions by specious argument without citing correctly cases, stat-

utes, or other legal authorities, sometimes leaving out the important parts of sentences so as to try to convey the opposite meaning from that intended by the writer. The petition for writ of certiorari should be granted in order that the constitutional rights of the parties involved may be protected and property of defenseless women saved from confiscation at the hands of these who are thirsting for commissions and contingent fees.

Respectfully submitted,

ALBERT C. DULANEY,
Petitioner,
803 Brady Building,
San Antonio 5, Texas.

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